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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,886	03/15/2002	Steven L. Ringler	RIN03 P-306	5404

7590

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EXAMINER

ROANE, AARON F

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 06/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

# Office Action Summary

Application No.

10/099,886

Applicant(s)

RINGLER ET AL.

Examiner

Aaron Roane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-26 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-9, 16, 17, 20, 21, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Eggers (USPN 5,496,314).

Regarding claims 1, 7-9, 16, 20, 21 and 25, Eggers discloses a heating device comprising a shroud (190), a hair inlet aperture (202 and open end 203), a heating-element cavity (interior of distal end of 201), a heating-element (112) positioned in the heating cavity, a handle (113) that supports the shroud as well as the heating-element and a vacuum (not shown, see col. 3, lines 38-50) as well as a vacuum hose (115), see col. 10, lines 1-65 and figure 7.

Regarding claims 2 and 17, Eggers further discloses a device capable of performing the recited function, specifically the temperatures, see col. 5, lines 11-32.

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Regarding claims 5, 6 and 26, Eggers further discloses a sheath (distal end of shroud 191, 201) which is polished ("sanded or grounded"), see col. 10, lines 20-35.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 10, 17-19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggers (USPN 5,496,314) in view of being well known in the art, as shown by Ellman et al. (USPN 6,001,077).

Regarding claims 2-4 and 17-19, the recited limitations are intended use, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Furthermore, are silent as to the inflation pressure of their balloons. Pending a statement of criticality the recited temperature ranges are

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considered to be an obvious design choice over the ranges of Eggers and not patentably distinct thereover.

Regarding claims 10 and 22, Eggers discloses the claimed invention except for explicitly reciting a filter or air filter. It is well known in the art to provide a vacuum source of an electrosurgical device with a filter in order to reduce the smoke and odor of vaporized tissue. For example, Ellman et al. teach the inclusion of multiple filters (a pre-filter 32 and a first filter 40) in order to filter micro-organisms and odor, see abstract and col. 2, line 50 to col. 3, line 35 and figure 2. Therefore, at the time of the invention it would have been obvious to one of ordinary skill to modify the invention of Eggers as is well known in the art and taught<sup>5</sup> by Ellman et al., to provide the vacuum with a filter or multiple filters in order to remove micro-organisms and odor.

Claims 11-14, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggers (USPN 5,496,314) in view of being well known in the art, as shown by Edwards et al. (USPN 6,569,159 B1).

Regarding claims 11-14, 23 and 24, Eggers discloses the claimed invention except for explicitly reciting a temperature control unit in communication with a temperature sensor in the form of a thermocouple to sense the temperature of the heating-element or of the region just proximate the heating-element and a user interface in communication with the temperature control unit. It is very well known in the art to provide an electrosurgical

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tool with a temperature control means comprising a user interface in communication with a temperature control unit, which in turn is in communication with a temperature sensor in the form of a thermocouple to sense the temperature of the heating-element or of the region just proximate the heating-element in order to provide the desired temperature depending on the treatment. For example, Edwards et al. disclose a cell necrosis apparatus and teach the provision of a temperature control means comprising a user interface (50) in communication with a temperature control unit (48), which in turn is in communication with a temperature sensor (126) in the form of a thermocouple to sense the temperature of the heating-element or of the region just proximate the heating-element in order to provide the desired temperature depending on the treatment, see col. 11, line 17-57 and col. 13, lines 14-24 and figures 20, 21 and 24. Therefore, at the time of the invention it would have been obvious for one of ordinary skill in the art to modify the invention of Eggers, as is well known in the art and as taught by Edwards et al., to provide the electrosurgical tool with a temperature control means comprising a user interface in communication with a temperature control unit, which in turn is in communication with a temperature sensor in the form of a thermocouple to sense the temperature of the heating-element or of the region just proximate the heating-element in order to provide the desired temperature depending on the treatment.

*Allowable Subject Matter*

Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references may prove useful. Both Hewel, III (USPN 5,269,781) and Hunsberger et al. (USPN 5,300,069) disclose electrosurgical heating devices with vacuum sources. The von der Heyde (USPN 6,100,501) patent, which is directed to tick removal, has much of the structural limitations of the claimed invention. Ingle et al. (USPN 6,572,639 B1) disclose a heating/cooling device and disclose temperature controlling/monitoring means that are well known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (703) 305-7377. The examiner can normally be reached on 9am - 5pm, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 305-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

A.R. *A.R.*  
June 17, 2003

*Roy D. Gibson*  
ROY D. GIBSON  
PRIMARY EXAMINER